

TIMOTHY M. FLAHERTY (SBN 99666)
MELISSA M. PALOZOLA (SBN 278858)
CLARK HILL LLP
One Embarcadero Center, Suite 400
San Francisco, CA 94111
Telephone: (415) 984-8500
Facsimile: (415) 984-8599
Email: TFlaherty@clarkhill.com
Email: MPalozola@clarkhill.com

6 Attorneys for Defendant
7 MARTHA KONGSGAARD, individually
and as Trustee of The Martha Kongsgaard
GST Exempt Trust U/T/A dated October 21, 1993

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

2 FRANCIS WANG, individually and as Trustee
of WFT-TNG, a California Trust.

Plaintiff,

V.

6 MARTHA KONGSGAARD, individually and
as Trustee of The Martha Kongsgaard GST
Exempt Trust U/T/A dated October 21, 1993

Defendant.

Case No. 3:19-cv-00907-AGT

**DECLARATION OF MELISSA M.
PALOZOLA IN SUPPORT OF MARTHA
KONGSGAARD'S OPPOSITION TO
PLAINTIFF'S MOTION FOR LEAVE TO
AMEND AND SUPPLEMENT
COMPLAINT AND TO TERMINATE STAY
OF PROCEEDINGS**

Date: November 6, 2020
Time: 10:00 a.m.
Courtroom A
Judge: Hon. Alex Tse

1
2 I, Melissa M. Palozola, declare:

3 1. I am an attorney at the law firm of Clark Hill LLP, attorneys of record for
4 Plaintiff Martha Kongsgaard Individually and as Trustee Of The Martha Kongsgaard GST
5 Exempt Trust U/T/A Dated October 21, 1993, (“Kongsgaard”) in this action as well as Napa
6 County Superior Court Case No. 19CV000286, *Martha Kongsgaard v. Francis Wang, et al.*

7 2. I am also attorney of record for Peter Brian Peletta in Napa County Superior
8 Court Case No. 19CV000342, *Francis Wang, et al. v. Peter Peletta*.

9 3. The matters set forth herein are based upon my personal knowledge. If called
10 upon to testify as to the matters set forth herein, I shall do so truthfully and to the best of my
11 ability.

12 4. Trial in the Napa County Court Napa County Superior Court Case No.
13 19CV000342, *Francis Wang, et al. v. Peter Peletta* was originally set for April 27, 2020.
14 Plaintiff Francis Wang requested that the trial date be continued. Trial in that case is now
15 currently set for November 12, 2020, before Judge Victoria Wood.

16 5. Trial in the Napa County Superior Court Case No. 19CV000286, *Martha*
17 *Kongsgaard v. Francis Wang, et al.* is set for March 18, 2021, before Judge Victoria Wood.
18 Written discovery between the parties and production of records from third-party subpoenas are
19 nearing conclusion. Party depositions are proceeding and set to conclude in October.

20 6. On October 8, 2020, my office wrote Plaintiff’s counsel, informed counsel of the
21 deficiencies with the Motion and proposed allowing counsel leave to amend Plaintiff’s complaint
22 in this case provided the action would remain stayed pending the state court proceeding. I also
23 offered to refrain from seeking sanctions under Rule 11 in the event the Plaintiff agreed to stay
24 the federal court action pending resolution of the encroachment and contract claims in state
25 court. As set forth in my letter, counsel intentionally truncated the email correspondence between
26 the parties. I requested a response by noon on October 9, 2020, given the impending opposition
27 deadline. Plaintiff’s counsel did not respond as requested. A true and correct copy of that

correspondence is attached hereto as **Exhibit 1**.

7. Then, on October 13, 2020, Plaintiff's counsel informed me that a meet and confer was required prior to filing a Rule 11 request for sanctions.

8. On October 14, 2020, I requested that Plaintiff's delay the hearing date on this Motion to allow the parties time to meet and confer. As of the time this Opposition has been filed, no response has been received from Plaintiff's counsel. A true and correct copy of that correspondence is attached hereto as **Exhibit 2**.

9. On December 4, 2019, I served Martha Kongsgaard's document production on Defendant Francis Wang in the Napa County Superior Court Case No. 19CV000286, *Martha Kongsgaard v. Francis Wang, et al.* That document production includes the documents affixed in support of Plaintiff's proposed First Amended Complaint. A true and correct copy of that correspondence is attached hereto as **Exhibit 3**.

10. On December 13, 2019, co-counsel served Peter Brian Peletta's production on Plaintiff Francis Wang, Napa County Court Napa County Superior Court Case No. 19CV000342, *Francis Wang, et al. v. Peter Peletta*. That production contained bates PELETTA 0395 – 1807, selected pages of which were also affixed in support of the Plaintiff's proposed First Amended Complaint

11. As of this date, Plaintiff Francis Wang has not paid my client Mr. Peter Brain Peletta the \$1,810 owed to him as a result of Plaintiff's discovery abuses.

12. My office defended the depositions of Martha Kongsgaard and Peter Goldman. No testimony regarding any racial animus towards the Wangs was forthcoming.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 14, 2020 in San Francisco, California.

/s/ *Melissa M. Palozola*
MELISSA M. PALOZOLA

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was filed *via* CM/ECF on October 14, 2020 and as a result has been served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Lydia M. Brown
Lydia M. Brown